

January 7, 2021

Via ECF

Honorable Paul G. Gardephe
United States District Judge
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Re: United States v. Avenatti, No. S1 19 Cr. 373 (PGG)
**Motion for an Additional 90-day Adjournment of
Sentencing Date and Filing of Sentencing Submissions**

Dear Judge Gardephe:

Mr. Avenatti's sentencing hearing is currently scheduled for February 17, 2021. We write to respectfully request an additional adjournment of the sentencing date for ninety (90) days, until May 2021. Mr. Avenatti further requests a corresponding adjournment of the dates for the defense and government to file their sentencing submissions.

As this Court is aware, on February 14, 2020, a jury found Mr. Avenatti guilty of the three counts charged against him in the Superseding Indictment. At the time, Mr. Avenatti was in custody pursuant to a remand order entered by United States District Judge James Selna of the Central District of California. On April 24, 2020, Mr. Avenatti was temporarily released to home confinement in California pursuant to conditions set by Judge Selna in the wake of the COVID-19 pandemic. *See United States v. Avenatti*, Case No. SA-CR-19-61-JVS (ECF No. 154:7). Mr. Avenatti remains under home confinement in Venice, California. Undersigned counsel (Mr. Srebnick) is based in Miami, Florida, while undersigned counsel (Ms. Perry) is based in New York.

COVID-19 cases continue to spread dramatically around the United States. According to <https://covid.cdc.gov>, there were 299,904 new cases in the United States on January 6, 2021, and the seven-day moving average of new cases is 228,003, an increase of nearly 96,000 per day since Mr. Avenatti's last request for an adjournment. More than 132,000 people are currently hospitalized in the United States with COVID-19, nearly double the number since Mr. Avenatti last sought an adjournment. The seven-day moving average of new cases in New York City is 5,249, near an all-time high. By all accounts these numbers are going to get worse before they get better because of the holiday travel, the relaxation of attitudes, and other factors. On January 6, 2021, the United States District Court for the Southern District of New

York issued a First Amended Standing Order, M-10-468 (CM), extending the prohibition on in-person sentencing hearings through February 12, 2021.

On November 10, 2020, the United States District Court for the Southern District of New York issued a new “SDNY Protocol for Domestic Travelers.” That protocol continues to prohibit individuals from entering the courthouse if they have been in a state other than New York, Connecticut, New Jersey, Massachusetts, Pennsylvania, and Vermont in the previous 14 days for more than 24 hours, unless they meet certain criteria. The practical effect of this protocol is that undersigned counsel (Mr. Srebnick), Mr. Avenatti, and Mr. Avenatti’s two daughters, both of whom are attending high school and wish to attend Mr. Avenatti’s sentencing hearing, must travel to, and remain in, New York for at least seven days prior to the sentencing hearing to ensure that there is sufficient time for everyone to schedule the accepted test and receive the (hopefully) negative results.

For these reasons, Mr. Avenatti respectfully requests that the Court grant an additional adjournment of the sentencing of 90 days, until May 2021, before requiring him, his family, and undersigned counsel to travel to New York for sentencing. It is reasonable to expect that, by that date, the increased vaccination of the public will result in a substantially reduced number of cases, make domestic travel safer, and allow for in-person hearings. Moreover, Mr. Avenatti respectfully requests that his sentencing submission be due three weeks before any new sentencing date and that the government’s sentencing submission be due one week after the due date for the defense submission.

A further delay would not prejudice the government. Mr. Avenatti remains on home confinement, subject to restrictive conditions, and continues to prepare for multiple trials in connection with two additional indictments.¹ The alleged victims in the case – Coach Gary Franklin and Nike – have already testified extensively at trial, so there is no risk that the victims will not be heard.

The government advised that its position is as follows: “The government objects to an adjournment to the extent that the Court is able reasonably to assure the safety of participants on February 17, 2021. Should the Court find that it cannot do so, the Government would request that the sentencing be adjourned to the soonest date on which the Court can reasonably assure the safety of the participants of the proceeding.”

Thank you for your consideration of this request.

Respectfully Submitted,
/s Scott Srebnick
Scott A. Srebnick
E. Danya Perry

cc: Government Counsel

¹ Mr. Avenatti’s trial (of severed counts) in the California case has been set for July 13, 2021.